

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GABRIEL BLACK, )  
Petitioner, ) No. C 08-3218 CRB (PR)  
vs. ) ORDER OF DISMISSAL  
MICHAEL MARTEL, Acting Warden, ) (Doc # 2)  
Respondent. )

Petitioner, a state prisoner incarcerated at Mule Creek State Prison in Ione, California, has filed a second petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a January 5, 2005 conviction and sentence from Santa Clara County Superior Court. His first petition was filed on February 27, 2008 and an order to show cause recently issued on July 21, 2008. See Black v. Martel, No. C 08-1151 CRB (PR) (N.D. Cal. July 21, 2008) (order to show cause).

Based on petitioner's affidavit of indigence, his application for leave to proceed in forma pauperis under 28 U.S.C. § 1915 (doc # 2) is GRANTED. But the instant second petition is DISMISSED as duplicative. Cf. Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (duplicative in forma pauperis complaint may be considered abusive and dismissed under 28 U.S.C. § 1915).

1 Petitioner is free to amend his first petition to include any claims raised in  
2 his second petition which were not raised in the first petition. All claims relating  
3 to petitioner's January 5, 2005 state court conviction and sentence must be  
4 brought and litigated in civil case number 08-1151 only.

5 The clerk shall terminate all pending motions as moot and close the file.

6 SO ORDERED.

7 DATED: July 31, 2008

  
CHARLES R. BREYER  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

GABRIEL BLACK,

Case Number: CV08-03218 CRB

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

SERBIA et al,

Defendant.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 31, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gabriel Black V-65533  
MCSP  
A-5-142  
P.O. Box 409020  
Ione, CA 95640

Dated: July 31, 2008

Richard W. Wiking, Clerk  
By: Barbara Espinoza, Deputy Clerk